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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION  
WESTERN DIVISION

JOHN S. WHITE,  
on behalf of himself and those  
similarly situated,

Plaintiff,

vs.

E-LOAN, INC., and  
DOES 1 through 10, inclusive,

Defendants

) NO. CV-O5-02080 SI

) CLASS ACTION

) STIPULATED [PROPOSED]  
) PROTECTIVE ORDER

1           The parties, having stipulated that a Protective Order should be entered  
 2 pursuant to Rule 26(c) of the Rules of Civil Procedure to maintain the  
 3 confidentiality of certain information and materials to be exchanged between the  
 4 parties, and it appearing to the Court that such a Protective Order is necessary and  
 5 appropriate and that it will facilitate discovery;  
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7  
 8           IT IS THEREFORE ORDERED that:

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 10          1.     Designation of "CONFIDENTIAL MATERIALS." Each party may  
 11 identify discovery materials produced by it, including initial disclosures,  
 12 documents and things, answers to interrogatories, responses to requests for  
 13 production, responses to requests for admission, and deposition exhibits, and all or  
 14 portions of deposition or hearing transcripts, as "CONFIDENTIAL MATERIALS" by  
 15 affixing thereto the legend:  
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17       CONFIDENTIAL MATERIALS, CONFIDENTIAL or **(Subject to Protective Order)**

18       A party may designate discovery materials as "CONFIDENTIAL MATERIALS" or  
 19 "CONFIDENTIAL" to the extent that the party, through counsel, believes such  
 20 discovery materials are confidential because they include: confidential business or  
 21 technical information; trade secrets; proprietary business methods or practices;  
 22 personal information, including personal financial information about customers or  
 23 applicants, any party to this lawsuit, or an employee of any party to this lawsuit;  
 24 information regarding any individual's insurance, banking, credit or lending  
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relationships, including, without limitation, information regarding the individual's mortgage or credit history; and any other competitively sensitive confidential information.

2. Definition of "CONFIDENTIAL MATERIALS." "CONFIDENTIAL MATERIALS" shall be those items designated under paragraph 1 and any notes, work papers, or other documents containing "CONFIDENTIAL MATERIALS" from such items.

3. Certification of Confidentiality. Affixing the legend "CONFIDENTIAL," "CONFIDENTIAL MATERIALS" or "CONFIDENTIAL MATERIALS (Subject to Protective Order)" to discovery materials produced by the party constitutes a certificate by the party that it has read the discovery material and that to the best of its knowledge, information and belief, formed after reasonable inquiry, the discovery material is confidential under the definition of "CONFIDENTIAL MATERIALS" and that the confidentiality designation has not been interposed for any improper purpose such as to harass, cause unnecessary delay, and/or needlessly increase the cost of litigation.

4. Definition of Litigation. As used herein, Litigation shall mean the above captioned proceeding only.

5. Limitations on Disclosure of "CONFIDENTIAL MATERIALS." Discovery Materials designated "CONFIDENTIAL MATERIALS" or

1 “CONFIDENTIAL” shall be maintained in confidence by the party to whom such  
2 materials are produced or given, shall not be used for any business, commercial,  
3 competitive, personal or other purpose, shall be used only for the Litigation (and  
4 not for other present or future cases or disputes), and shall not be disclosed to any  
5 person except the following qualified recipients:  
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- 8 a. The Court and its officers;
- 9 b. Counsel of record, employees of counsel of record and the  
10 parties;
- 11 c. The officers, directors, and employees (including in-house  
12 counsel) of the party receiving the documents to whom  
13 disclosure is reasonably necessary for this litigation;
- 14 d. Outside consultants and experts retained by counsel or the  
15 parties to assist in this Litigation, provided that each such third  
16 party has been provided a copy of the Consent Protective Order  
17 and has signed a receipt acknowledging the receipt of the  
18 Order;
- 19 e. Other persons, provided that (1) the producing party has  
20 consented in writing to disclosure to such other person, and (2)  
21 such other person has been provided a copy of this Consent  
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1 Protective Order and has signed a receipt acknowledging the  
2 receipt of the Order;

3  
4 f. Deponents in depositions in this Litigation, provided any  
5 “CONFIDENTIAL MATERIALS” shall be subject to the provisions  
6 of paragraphs 12 through 14; and  
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8 g. Any copy services or other service providers engaged by  
9 counsel or the parties to assist in this Litigation, provided that  
10 each such third party has been provided a copy of the Consent  
11 Protective Order and has signed a receipt acknowledging the  
12 receipt of the Order.  
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15 6. Notice of Disclosure. All persons to whom “CONFIDENTIAL  
16 MATERIALS” are provided shall be subject to this Order and shall maintain such  
17 information in confidence, shall not use such information for any purpose other  
18 than the prosecution or defense of this Litigation, and shall not disclose such  
19 information to any other person except in accordance with paragraph 5.  
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22 7. Retention of Receipts. Counsel to whom “CONFIDENTIAL  
23 MATERIALS” are disclosed shall keep in their files the originals of the signed  
24 receipts required by the Protective Order.  
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26 8. Limitation of Disclosure. “CONFIDENTIAL MATERIALS,” or copies  
27 thereof, bearing the identification specified in paragraph 1 or portions, summaries,  
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1 or abstracts thereof, shall not be made public by the party to whom they are  
2 disclosed, unless such "CONFIDENTIAL MATERIALS," or copies thereof, become a  
3 part of the public record of this Litigation.  
4

5       9.     Challenge to Designation. This Consent Protective Order is without  
6 prejudice to the right of any party to contest a designation of "CONFIDENTIAL  
7 MATERIALS" as inappropriate. In the event a party receiving "CONFIDENTIAL  
8 MATERIALS" believes that certain material has been improperly so designated, it  
9 may communicate that fact to counsel for the producing party identifying the  
10 material at issue in writing within twenty (20) days after the production of the  
11 material or its designation as confidential, whichever comes later. If a party  
12 communicates a challenge to a designation of "Confidential Materials" within the  
13 applicable time period, counsel for the producing party will then have twenty (20)  
14 business days from the date of any such notice to submit the challenged materials  
15 to the Court, along with a motion seeking to adjudicate the confidentiality of the  
16 materials at issue. The parties may jointly agree to extend the time for filing such  
17 a motion, if they believe doing so will avoid the potentially unnecessary  
18 expenditure of resources by the Court. The challenging party then has twenty (20)  
19 business days from the date of the filing of the motion by the producing party to  
20 submit a memorandum to the Court objecting to the designation of the materials at  
21 issue as "CONFIDENTIAL MATERIALS." All materials at issue shall be treated as  
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1 Confidential until the Court rules otherwise. Nothing in this Protective Order  
2 shall shift the burden of proof on this motion from the party asserting that the  
3 material is confidential.  
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5 10. Supplemental Orders. This Protective Order shall not foreclose any  
6 party from moving the Court for an order relieving the party of the effect of the  
7 Order or from applying to the Court for further or additional protective orders. In  
8 addition, the parties may agree among themselves to modification of this  
9 Protective Order, subject to the approval of the Court.  
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12 11. Return of "CONFIDENTIAL MATERIALS." Within thirty (30) days after  
13 the final termination of this Litigation, including any appeals, each counsel shall  
14 either return all "CONFIDENTIAL MATERIALS" in his possession, custody, or  
15 control, and all copies, portions, summaries, or abstracts thereof to counsel for the  
16 disclosing party, or shall certify destruction thereof.  
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19 12. Use of "CONFIDENTIAL MATERIALS" at Depositions. If counsel for  
20 any party believes that a question put to a witness being examined in pretrial  
21 deposition will disclose "CONFIDENTIAL MATERIALS," or that the answer to any  
22 question or questions require such disclosure, or if documents to be used as  
23 exhibits during the examination contain such "CONFIDENTIAL MATERIALS," such  
24 counsel shall have the option to so notify requesting counsel and insist that the  
25 deposition shall be taken in the presence only of counsel, supporting personnel  
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1 identified in paragraph 5, parties to the Litigation, the court reporter, video  
2 operator and their assistants, and persons who have signed a receipt  
3 acknowledging the receipt of this Protective Order. Failure to invoke this right  
4 shall not destroy, infringe or erode the confidential nature of such information.  
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7 13. Designation of Transcripts of Depositions. Transcripts of depositions  
8 shall be treated as "CONFIDENTIAL MATERIAL," provided that within thirty (30)  
9 business days after counsel for the party requesting such treatment of any  
10 deposition has received a copy of the transcript of the deposition, requesting  
11 counsel shall designate to other counsel those portions of the transcript regarded  
12 as containing "CONFIDENTIAL MATERIAL," and only those portions so designated  
13 shall thereafter be treated as "CONFIDENTIAL MATERIAL."  
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17 14. Use of Transcripts of Depositions. Transcripts of any deposition  
18 taken by any party that are designated in whole or in part as containing  
19 "CONFIDENTIAL MATERIALS" shall be prepared for and furnished by the court  
20 reporter only to outside counsel for the parties, who may then provide copies only  
21 to the persons identified in paragraph 5.  
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23  
24 15. No Modification of Privileges. Nothing in this Protective Order shall  
25 modify the law regarding the attorney-client privilege, the attorney work-product  
26 privilege, trade secret or other confidential research, development, or commercial  
27 information, or other applicable privileges.  
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1           16. File Under Seal. In the event that any “CONFIDENTIAL MATERIALS,”  
2 or the contents thereof, are in any way disclosed in any pleading, deposition, or  
3 transcript, or other papers filed with the Court, pre-trial, the confidential  
4 information shall be filed under seal pursuant to Civil Local Rule 79.  
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6           17. Inadvertent Disclosure of Privileged Documents. Inadvertent  
7 production of documents otherwise subject to the attorney-client privilege, opinion  
8 work product immunity, or other applicable privilege shall not automatically  
9 constitute a waiver of any privilege or immunity. Upon notification that a  
10 document or other discovery material has been inadvertently produced and that a  
11 claim of attorney-client privilege, opinion work product or other privilege will be  
12 made with regard to such document or other discovery material, the party  
13 receiving such notice shall refrain from utilizing said document or discovery in  
14 any manner or form including specifically, but not exclusively, use during the  
15 course of a deposition, review with witnesses, or any other disclosure or review  
16 whatsoever, pending a ruling on a motion seeking the return of the document or  
17 discovery material. A party seeking such protection shall file a motion with the  
18 Court within seven days measured from the date of the refusal by the receiving  
19 party to return such document or discovery material. A hearing shall thereafter be  
20 conducted as soon as an available court date is obtained.  
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1           18.   Inadvertent Disclosure of “CONFIDENTIAL MATERIALS.” If a party or  
2 any of its representatives, including but not limited to its counsel, outside  
3 consultants, and experts, inadvertently discloses any information or documents  
4 designated as “CONFIDENTIAL MATERIALS” pursuant to this Order to persons who  
5 are not authorized to use or possess such “CONFIDENTIAL MATERIALS,” the party  
6 shall provide immediate written notice of the disclosure to the party whose  
7 “CONFIDENTIAL MATERIALS” were inadvertently disclosed. Similarly, in the event  
8 a party has actual knowledge that “CONFIDENTIAL MATERIALS” are being used or  
9 possessed by a person not authorized to use or possess “CONFIDENTIAL  
10 MATERIALS” pursuant to this Order, regardless of how the “CONFIDENTIAL  
11 MATERIALS” were disclosed or obtained by such person, the party shall provide  
12 immediate written notice of the unauthorized use or possession to the party whose  
13 “CONFIDENTIAL MATERIALS” are being used or possessed. No party shall have an  
14 affirmative obligation to inform itself regarding such possible use or possession.  
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16           19.   Notice of Court Subpoena or Order. If another court or  
17 administrative agency subpoenas or orders production of information or  
18 documents designated confidential which a party has obtained under the terms of  
19 this Order, such party shall promptly notify the attorneys of record of the party or  
20 other person who designated the information or documents as confidential of the  
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pendency of such subpoena or order, and shall furnish those attorneys of record with a copy of said subpoena or order.

20. Agreements and Local State and Federal Laws Regarding “CONFIDENTIAL MATERIALS.” No party may be deemed to violate any federal, state or local laws or agreements governing the disclosure of confidential, personal or proprietary information by producing any such information in this Litigation, and compliance with this Order and governing discovery rules shall provide complete immunity to the producing party from any claim of violation of law or breach of contract (or related claims).

21. Material and Information Otherwise Obtained. Nothing in this Order shall apply to documents, information, material, or any portion thereof obtained by any party by means other than production by the other party in the discovery process in the above captioned proceeding and/or made public in the prosecution or defense of this Litigation.

22. No Waiver of Rights. Nothing in this Protective Order shall be deemed a waiver of any of the parties’ rights to oppose any discovery on any grounds or to object on any ground to the admission in evidence at any motion hearing or the trial of this Litigation of any matter discovered.

23. Effect on Scope of Discovery. Nothing in this Protective Order shall in any way limit the permissible scope of discovery in this Litigation.

24. Third Parties. A third party responding to a subpoena or other process in connection with this proceeding can obtain the protections afforded by this Protective Order by stating in writing that it has reviewed the Protective Order and agrees to be bound by its terms.

IT IS SO ORDERED:

This the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Honorable Sus



1 AGREED AS TO SUBSTANCE AND FORM:

2 JOHN S. WHITE E-LOAN, INC.

3 By his attorneys, By its attorneys,

4 JAMES, HOYER, NEWCOMER MAYER, BROWN, ROWE  
5 & SMILJANICH PA & MAW LLP

6 s/Terry Smiljanich

7 Terry Smiljanich  
(Appearance pro hac vice)

s/Rena Chng

8 Rena Chng  
(By Terry Smiljanich with permission)

9 DARBY, PEELE, BOWDOIN  
10 & PAYNE

11 W. Roderick Bowdoin

12 PO Drawer 1707

13 Lake City, FL 32056

14 Telephone: 386/752-4120

15 Facsimile: 386/755-4569

16 Email: [rodbowdoin@bellsouth.net](mailto:rodbowdoin@bellsouth.net)

17 HOGAN & FAHLGREN, P.A.

18 Steven M. Fahlgren

19 4751 S. Conway Rd,

20 Orlando, FL 32812

21 Telephone: 407/852-1711

22 Facsimile: 407/852-9088

**PROOF OF SERVICE**

I, Diane Einsmann, declare as follows:

I, am a resident of the State of Florida, over the age of eighteen years, and not a party to the within action. My business address is James, Hoyer, Newcomer & Smiljanich, P.A., 4830 W. Kennedy Blvd., Suite 550, Tampa, Florida 33609.

On December 2, 2005, at Tampa, Florida, I served the following document(s) listed below via PDF e-mail and as follows:

STIPULATED [PROPOSED] PROTECTIVE ORDER

**SEE ATTACHED LIST**

- ☐ BY PERSONAL SERVICE: I caused a true and correct copy of the document(s) to be delivered to the persons shown on the attached list.
- ☒ BY ELECTRONIC MAIL: I e-mailed a true and correct copy of the document(s) for delivery to the persons shown on the attached list.
- ☐ BY U.S. MAIL: I placed a true and correct copy of the document(s) in a sealed envelope with first class postage fully prepaid in the United States Mail at Tampa, Hillsborough County, Florida, addressed as shown on the attached list.
- ☐ BY FACSIMILE: I transmitted by facsimile a true and correct copy of the above referenced documents to the persons shown on the attached list.

Lee H. Rubin

Email: [lrubin@mayerbrownrowe.com](mailto:lrubin@mayerbrownrowe.com)

Rena Chng

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71 South Wacker Drive

Chicago, IL 60606

I am readily familiar with James, Hoyer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

Executed on December 2, 2005, at Tampa, Florida.

s/Diane Einsmann